

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS shall give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. The State Conservationist may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

(e)(1) The Chief will conduct an assessment during fiscal year 2008 and each subsequent fiscal year for the purpose of determining the interest and allocations for the Prairie Pothole Region to enroll land determined eligible under § 1467.4(d)(5) of this part into 30-year easements. Annually, the Chief will provide specific instructions for the assessment in writing to the applicable State Conservationists.

(2) The Chief will make an adjustment to the allocation for an applicable State for a fiscal year, based on the results of the assessment conducted under paragraph (e)(1) of this section for the State during the previous fiscal year.

§ 1467.7 Enrollment process.

(a) *Tentative Selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in WRP, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land unless otherwise notified by the landowner.

(c) *Acceptance and effect of offer of enrollment—(1) Easement.* For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement compensation amount; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the option agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *Restoration cost-share agreement.* For applications requesting enrollment through the restoration cost-share agreement option, a restoration cost-share agreement shall be presented by NRCS to the landowner, which will describe the enrolled area, the agreement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(3) *30-year contract.* For applications requesting enrollment through the 30-year contract option, a 30-year contract shall be presented by NRCS to the landowner, which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the 30-year contract. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment

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document establishes the terms of enrollment consistent with the terms and conditions of this part, and identifies the:

(i) Scope of the agreement between NRCS and the landowner;

(ii) Basis for NRCS to obligate funds; and

(iii) Nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

(2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land as set forth under § 1467.11;

(ii) Implementing a WRPO which provides for the restoration and protection of the functions and values of wetlands;

(iii) Recording the easement in accordance with applicable State law; and

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake, on a cost-share basis with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, sale of the land, risk of hazardous substance contamination, or other reasons. The offer of enrollment to the landowner shall be void if not

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executed by the landowner within the time specified.

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§ 1467.8 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.* (1) Compensation for an easement under this part shall be made in cash in such amount as is agreed to and specified in the option agreement to purchase or 30-year contract.

(2) Payments for non-permanent easements or 30-year contracts shall be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS shall pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based on an area-wide market analysis or survey;

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section; or

(iii) The landowner offer.

(4) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional